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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **30.06.2011**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

**IN THE MATTER OF
THE CHILDREN (NORTHERN IRELAND) ORDER 1995**

09/142451

Between:

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

B & H

Respondents.

WEIR J

Anonymity

[1] This judgment has been anonymised in order to protect the identity of the child concerned. Nothing may be published of or concerning this matter that would lead directly or indirectly to the identification of the child or the respondents.

The nature of these proceedings

[2] The child ("X") who is the subject of these proceedings was born on 12 August 2009. Following admission to hospital on 7 December 2009 at the age of 4 months she was found to have bruising below the left eye with an explanation provided by the mother that she had hit her face with her

dummy. X was detained in hospital for further examination including x-rays which revealed the presence of multiple fractures of differing ages. No explanation was forthcoming for the fractures although the respondents, who are the parents of X, accept that the injuries were non-accidental in nature. The purpose of the hearing to which this judgment relates was to endeavour to ascertain who was responsible for the injuries and, if not, to determine who is within the pool of perpetrators. The father for his part accepts that he is within the pool but the mother does not. Other adults had contact with X, particularly members of the mother's family and the father's parents. Neither the applicant Trust nor either of the respondents considers that the father's parents could lie within the pool of perpetrators.

The medical evidence

[3] A number of medical reports and records relating to the care given to X at hospital were by agreement admitted in evidence without formal proof and in addition evidence was given by Dr Dewi Evans, Consultant Paediatrician, who had reviewed the documents in the case and provided a report dated 10 June 2010 on his conclusions in advance of the hearing. In the course of his evidence he adopted his report which he amplified with the following observations in relation to the injuries:

- (1) There were multiple fractures to a number of ribs caused by severe squeezing of the chest wall sufficiently hard to fracture the ribs both posteriorly and anteriorly. The presence of callus formation indicated fractures occurring between 7 and 10 days or more prior to the x-ray on 9 December 2009. Dr Evans said that he had never seen so many rib fractures as in this case with a total of 13 or 14 recorded. He said that anyone subjected to the pressure needed to break a rib would suffer severe pain but that it would be difficult to say how much pain and for how long the child would have experienced it. He would have thought that the baby would experience pain whenever it was picked up but once the baby was comforted and fed he suspected that it would stop crying quickly and that once the callus had formed "presumably" the baby would not be in pain. He said that these matters were "reasonably speculative".
- (2) There was a transverse fracture of the left ulna at the end nearest to the elbow. Such fractures occur when a bone is snapped. In his opinion and bearing in mind the age of the child he considered that the likelihood was that the forearm was bent with sufficient strength

to break the bone. There was no callus formation in the case of this fracture which meant that it had occurred within the previous 6 days. He considered that the baby would initially have howled in pain and would have cried at any time when the arm was moved as such movement would cause pain. The child would have had limitation of movement in the arm and would hold it by its side and not move it. He said that he would expect that any adult involved in normal contact with the baby would notice some discomfort from the arm "as you cannot do anything with a baby without moving the arms".

- (3) There was a fracture to the right tibia (which is the longer of the two leg bones) at the ankle end of it. In his opinion the baby would have been held by the ankle. There was no callus present at that fracture site either which again meant that the injury will have been sustained during the 1 to 6 days prior to the x-ray.
- (4) There was also bruising underneath the left eye. Dr Evans said that it is very difficult to age bruising and that the presence of some yellowness is the only indicator that might suggest that it was present for over 18 hours but that one simply cannot age bruising accurately. The bruise being within the orbit which is relatively well protected he did not consider this to be accidental.

[4] Dr Evans was cross examined by counsel for each of the parents with the object of establishing that a parent who had not caused an injury might have been unaware of the fact that the child was injured. Dr Evans said that he found it hard to accept that anyone could miss the pain that would result from the injury to the ulna saying:

"I think the ulnar bone injury should have been suspected by any parent"

It was pointed out to Dr Evans that a health visitor had seen X on 4 December and did not seem to have picked up the injury to which he responded that it depended what the health visitor had done with the baby on that occasion. For example whether she had picked it up, stripped it or just seen it sleeping. He pointed out that it is necessary to control babies' arms into their babygros.

[5] Evidence was given by two health visitors about their visits to the home on a number of occasions. They had been given to understand by the mother

that she was living on her own with the child and they were told nothing about the fact that the father also lived there. At no time did they see the father in the home and it emerged in the evidence that whenever the health visitors were at the house the father sat upstairs and that his existence was deliberately concealed from the health visitors by the parents because the mother was claiming single parent benefits. A matter which may well have significance was that on 30 September 2009 one of the health visitors was told that there were problems with the child's feeding. On 3 December one of the health visitors spoke to X's GP as a result of which the health visitors made follow up calls on 4 December and 7 December due to concern about X's weight and some bruising that had been noted. On the occasion of the visit on 7 December the health visitor noticed that X looked very pale and solemn and when she cried it was a most unusual cry of a kind that the health visitor had not heard before. The child seemed to be moaning and crying and she noticed a new bruise within the orbit of the left eye. The mother said that this bruise had happened a few days earlier and was caused by the child hitting itself with its dummy. The health visitor was concerned about this as she knew it was a new bruise and that this was a very young baby. In her view, however, the mother didn't seem concerned and didn't show any response when the health visitor said the child seemed to be in pain. The mother was not concerned, upset or angry - there wasn't any reaction. At this stage the mother said that she thought X had a "clicky hip" but the health visitor considered that such a condition should not cause the child pain or discomfort. When she commenced to examine the child she held its legs and the child moaned so the health visitor decided not to check the hips. She said that she wanted the child to be seen by the doctor and the mother co-operated with that. She was concerned because the child aged only 16 weeks now had 3 bruises, one of which had not been there on the visit on 4 December and the child appeared pale and in pain. The witness could not understand why the mother didn't seem to be concerned or have a reaction. She said that the child's 12 week immunisation due on 4 November 2009 had been missed and that the concern expressed by the doctor on 2 December was about the bruising then observed and the child's failure to thrive.

[6] The second health visitor who had visited on 4 December 2009 said that the mother had told her that the bruising noticed at that stage had been caused by X hitting herself with a hard plastic rattle. The health visitor felt that this was not heavy enough to have caused the bruising and she was concerned to see a baby at such a young age with bruising. She felt the mother's explanation was unlikely. The bruise noted by her colleague on 7 December in the area below the left eye had not been present during her visit on 4 December. Following her visit on that day she had contacted her colleague and arranged for her to follow up on 7 December. When cross examined by Miss Walsh Q.C. on behalf of the mother she said she noted that the baby was unsettled during feeding but that she felt it could well be due to feeding problems. The baby had cried while being undressed but it wasn't a distressed cry and didn't cause

her alarm. She said that when she was told that the bruising was due to the rattle the mother did not appear guilty and that the mother had related well to the child as did the grandmother.

[7] A senior social worker was called who gave evidence in accordance with the social work reports before the court, also admitted by agreement without formal proof. She said that a record of the interview of the mother at hospital on 9 December indicated that the mother had said that she didn't know the father's surname, that he was unaware of the child's existence and that she had only met him on two occasions. The Trust had only found out the identity of the father when his father had phoned the hospital and Social Services offices on 10 December and made them aware that his son was the father. An examination of the hospital records had disclosed that he was in fact present at the birth of the child. Social Services had endeavoured to discover who was the primary carer for the child within the home but the parents had each given very different accounts with the mother initially claiming that she hadn't been allowed to do anything with the baby and that the father had taken all to do with it and was very controlling whereas the father on the other hand said that while he would have been around the house he had very little "hands on" care of the baby. It had been unusually difficult to get an understanding as to who did what. When the foster carers suggested that the child, despite its young age, seemed to have been given solid food the father agreed that baby rice had been given whereas the mother said that the baby had never had solid food. The mother had consistently said that the father had caused the injuries but gave no detail as to how or when while the father had in turn maintained that he did not know how the injuries were sustained but was clear that he didn't inflict them. P, a sister of the mother, had told Social Services that she had seen bruising and the grandmother said that around the beginning of November she had seen nip marks and bruising. However neither woman had done anything about these observations at the time.

[8] The social worker gave evidence of the previous criminal convictions of both parents. The mother had convictions for assault in 2007 and for harassment and criminal damage in 2009. The father had convictions in 2009 for alleged criminal damage and driving offences. Asked by Mr Long on behalf of the Guardian ad Litem whether Social Services had been able to discover where the child had been and who had had access to it during the seven days prior to 7 December 2009 the social worker said that it had been extremely difficult to find out where exactly the child was during that period and who exactly had been looking after it at any given time.

The evidence of the parents

[9] The mother gave evidence that when she became pregnant her mother had helped her to obtain a privately rented house across the road from the mother's home. The father had moved in around April of 2009 and had stayed in the house every night. At that time he was working on a farm and she found him to be caring and protective of her. According to the mother she wanted to make it clear that they were living together but the father wouldn't agree. A good deal of her evidence was spent in retailing incidents of alleged bad behaviour by the father during the time that the couple were together including an incident at the Odyssey Arena when she alleged that he had struck a young girl for no good reason, propelling her across some rows of seats, threatening a lad who lived near them with a baseball bat, causing trouble on a bus excursion, assaulting the witness' sister, P, while she was visiting their home and waking up one night to find the child in its Moses basket beside the father who was sitting up in bed awake while there was a blanket over the child's face. She explained her failure to attend two missed medical appointments for X as being because she did not receive the appointment cards which she said she later found in a drawer and believes that the father had put them there. According to her the father was very resistant to her spending time at her mother's house across the road and that if she stayed there for any length of time he would text or telephone her there.

[10] With regard to the injuries to X, she said that the mark on her forehead she attributed to the child having hit itself with its rattle because when she came into the room from the kitchen X was propped up in the corner of the settee with a rattle in her hand and the father was with her. With regard to the mark below the left eye the witness agreed that there was such a mark. She had noticed it at night time when the couple were in bed and the Moses basket was in the bedroom. The witness says that she heard some noise and then saw a red mark under the child's eye and thought that it might be X trying to get her dummy. She could not say when she had got the mark. At the time the mark was red and not a bruise as it is seen to be in the police photographs. She had mentioned the mark to the father but he didn't say anything. When the health visitor came on 7 December and said that X had to be taken to the general practitioner she and a friend had taken X there. The father did not go with them. When the doctor and a colleague had examined X and indicated that the child must be taken to hospital the witness had gone home and on this occasion the father had gone to the hospital but he did not go in with the mother and child but telephoned the mother constantly from outside to ask who she was talking to within the hospital. She agreed that she did not tell the hospital staff that she was living with the father and that that only emerged on the Wednesday and her reason for not doing so was because she was claiming benefits as a single parent. The mother denied any knowledge as to how the fractures occurred and speculated with hindsight that the bruising was caused by the father. She agreed that she had not told anyone about finding the child with the blanket over its face during the night because she thought "may be it had wriggled it up".

[11] With regard to who should have the care of X in the future, the mother did not consider that the father's parents would be suitable because they would not be able to keep X safe. In her view the father told his parents what to do and it looked to her as though they were scared of him. She did not think that he would obey them if they told him not to do something. She further objected to the idea that the child should be brought up in the Catholic faith although she had known from the outset that the father was a Catholic and said:

"I have Catholic friends and have nothing against Catholics. If I had anything against Catholics I wouldn't have had a baby with a Catholic."

[12] Under cross examination by Mrs Keegan QC on behalf of Trust the mother said that in her opinion the injuries were caused by the father solely and that nobody else had done so. She claimed that most of the care provided for X was by the father and that she only attended to the child when the father was out or doing something else. She said that lots of time she had said she would like to do it but that he had replied: "She's my f'ing daughter". She agreed with a suggestion by Mrs Keegan that the father was controlling and aggressive and that the parents were not getting on well and the relationship was not very good by December 2009. Asked why she did not make it clear at the hospital that the father was heavy-handed with the child and rather had said that the baby was never out of her sight, she agreed that she ought to have told them but thought that she would lose her house and benefits. She could not explain why even when she knew about the fractures she still said nothing about the existence and behaviour of the father to the doctors. She said that she knew nothing about her mother having telephoned to the father's father on the evening of 9 December to tell him to conceal the existence of his son as a member of the household in which X had been living. She agreed that there were frequent rows in the house and denied that, notwithstanding Dr Evans' evidence that the fact that the child had a fractured arm would have been apparent to carers, anything had caused her to think that there was something wrong with the child. She had no recollection of any unusual cry on the part of X. Before the injuries were detected she did not think that X was at risk from the father - "I was at risk from [the father] but I didn't think he would do anything to X". She said that she had asked the father to leave at the end of October or the beginning of November but that he had pleaded with her to let him stay and that she had done so but that he didn't improve after that conversation and that they just argued. She concluded her evidence by saying:

"I don't know why I didn't tell the doctors it must have been my boyfriend on 9 December at the meeting even though I knew that I was the only one in the frame".

[13] The father gave evidence which in many ways was the mirror image of that given by the mother. He accepted that he was within the pool of perpetrators but denied that he had caused any injuries to the child or had any knowledge of how they had been caused except that he understood that the mark that had been caused under the eye was due to X hitting herself with the rattle. He described how he and the mother had got together, according to him the birth of X was not planned and that initially he was shocked but as time went on he became happy and he agreed to get a house where they could live together. He explained in some detail about his work on the farm and he said that he had gone along with the idea of the mother claiming as a single parent because it meant that they did not have to pay full rent for the house. He said that he did all the household chores and that the mother didn't help very much which caused tension. He claimed that the principal person involved in feeding X was the mother whilst he mostly prepared the bottles. During the night it was the mother who fed the baby and they took turns at changing nappies. He didn't think in his own mind that he had been too rough with X but said that he didn't have experience of babies as young as she was. So far as feeding was concerned he said that X "had her moments" and wouldn't keep milk down. He agreed that if he was at home when the health visitors called he would go upstairs and sit there until they had gone away. He had been there on a good few occasions when they had called. According to him the mother was subject to attacks of toothache during which she would have shouted at X and he would have told her not to be taking it out on X. According to him the toothache was bad throughout the period from the summer to November when it became really bad and when her teeth were giving her pain she was really cross. He agreed that he didn't get on very well with the mother's mother but the mother went to her mother's home every day though she never came to their home when he was there. According to him it was he who came into the room to see a bruise upon X and it was the mother who was there present with X and said that X had hit herself with the rattle. He recalled the day when X was sent to the hospital by the general practitioner but claimed that the reason he did not go into the hospital was because the mother said that he could not go in as he wasn't meant to exist. He went home and according to him there was not much communication until that Wednesday when the mother rang him to say that the x-rays disclosed fractures and the mother's mother then rang him and told him to get out of the house and not to come back. When he had asked who had done this she replied "I don't know". She told him not to try to contact the mother. The father then moved out as instructed and went to stay with a friend some miles away. He rang his mother and gave some indication of what he had heard and sometime later his father had phoned him and told him that they had been given a different story by the mother's mother. He stayed with the friend overnight and on the following day his father told him to return to his family home which he did. He had not visited X until the Friday of the week on which she had been admitted to hospital as he "couldn't get up before".

[14] The father then spent some time dealing with the various allegations that had been made against him by the mother of incidents of violence and bad temper outside the home which consisted of his seeking to explain away, justify or minimise whatever was alleged to have happened. When cross examined by Mrs Keegan the father said that he understood that he was regarded by the Trust as a risk to X and that if X were to be placed with his parents it would mean that he could not live in their home and could only have supervised contact. The father indicated that he was in agreement with that and said that he lived two miles from his parents and preferred to stay there. He remarked, perhaps tellingly, "I would have to get used to my father telling me what to do." He had no idea how the child had suffered its broken ribs, broken arm and broken leg and said that he did not cause the injuries. As to who might have caused the injuries he suggested as possibilities the mother, her mother and the mother's siblings though "may be not so much P (one of the siblings)". He was asked why when telephoned by the mother's mother and told to leave the house he didn't then go to the hospital to find out what was happening instead of going to stay at his friend's house? The answer was "I should have". He denied he was rough in his treatment of the child or that he rocked the child too vigorously and agreed that on one occasion he was told not to tuck the child in so tightly and accepted that. He agreed that the child did need a lot of attention and that there were ongoing problems with diarrhoea and feeding. He said that he had heard the mother telling the child to "f up and stop crying" and that she would have kicked prams and slammed doors although the child was never in the pram at such times. He said that he was concerned about her behaviour at the time and asked her to calm down and stop losing her temper. This behaviour was in November while she had severe toothache and not prior to that. He said that she shouted so loudly that the child cried and it was upsetting for him. It was pointed out to him that in his statement for the court there was no mention of this bad behaviour by the mother towards the child to which his response was "I just forgot to say about it" and gave a similar answer when asked why he hadn't mentioned it to the police when they interviewed him in June 2010. It was suggested to the father that he was bad tempered to which his reply was "not as bad as I used to be a couple of years ago". He said that he did not know why he had kicked the mother's sister, P, and that the incident at the Odyssey which resulted in the girl falling across rows of seats was due to her attempting to assault him and his putting up his hands and her overbalancing. He denied that there was any incident in which a blanket was found over the child's face whilst the couple were in bed.

Other evidence

[15] As will be apparent from the foregoing, little or no assistance was to be gained from the evidence of the parents as to which (if not both) was responsible for the multiple serious injuries sustained by X over a period of time. In effect, neither professed to know anything that could explain any of them other than perhaps the bruising but each was equally clear that he or she was not responsible and had various theories, including the other parent, as to who might have been. Put shortly, so far as both the parents were concerned it is all a great mystery. It was therefore useful to have some evidence from other sources. P, a sister of the mother, gave evidence which was of some assistance. She was an impressive and transparently honest witness who plainly had observed signs that troubled her but had been reluctant to do or say a great deal about them at the time, patently because she was frightened of the reaction of the mother and her own mother to anything she might say. She confirmed that there had been an occasion when she was visiting the parents and was feeding X during which X regurgitated some milk to which the father reacted by springing from his seat and attacking her, ultimately kicking her on the leg to cause her to leave the house. On 7 November 2009 she had kept X overnight before returning her to her mother's house on 8 November. She had noticed nothing on the evening of 7 November because the lighting was dim but when changing X on the morning of 8 November she noticed three marks on the child. One was on the left side of its neck, one on its left arm and one on its left leg. The marks on the leg and arm were small but that on neck was bigger. When she brought the child back to her mother's house at around 4.00 pm she showed the marks to her mother and asked her should she show them to her sister, the mother. She didn't mention them to the mother herself but the neck mark was an obvious one. She recalled being in her mother's house on 6 December. When she went in her sister, the mother, was holding the child and the child was crying. She saw that it had bruising round its eye and a bump on its head. She asked the mother what had happened and she had replied that the child must have hit herself on the head with the dummy and her rattle. P had replied that X couldn't hold a rattle properly and that her dummy didn't have anything on it to hold it by. She said "that's when it all clicked with me and I thought that someone must be harming this child." I said to my mum, "did you see the marks on the child?"

[16] The witness said that in the period between the birth of X and the incident when she was hit by the father in the parents' home on 25 August 2009 she had seen the father handling the child. She said that he carried her "like a rag doll" and if you went to speak to the child you were told to leave her alone as she was his. He winded her with his fist clenched and thumping her on the back. After the incident when the father had attacked her on 25 August she had only seen the child at her mother's home and the father was never present after that date. She said that she didn't see anything to suggest that the child had fractured ribs but she had held the baby and it was only happy either standing on your legs or being held over your shoulder. She said that she had seen the father with his parents only on one occasion and got the feeling that he

was "the boss of his parents". She explained this by referring to the tone of his voice when he spoke to them, that he was "being the big lad" and not very well mannered.

[17] The witness was cross examined by Miss Mackenzie for the Trust during which she agreed that X was not easy to feed, she only took a little milk and kept bringing it up. She recalled that there was concern about whether X was putting on weight and she would have asked about that. It was the witness who had offered to keep the child overnight. She produced some photographs which she had taken on the night that she looked after the child in which one of the marks that she had noticed happened to appear although that was not why she had taken the photographs at the time. She said that the mark on the neck was perhaps 1 inch or 1 ½ inches, round in shape and on the front of the neck, more to the left side and agreed that it would have been obvious. When she brought the child back to her mother's and showed the marks to her the mother had said "I knew he was nipping her". She hadn't mentioned the marks to her mother or her sister subsequently but on 6 December 2009 she had noticed bruising and had asked what had caused it and it was then that she was told that X had hit her head with the rattle. P said, "I challenged her because I knew the child couldn't have held a rattle to hit her head". She identified the mark shown in the police photographs of the bruise under the left eye as being the mark that she saw although when she saw it it was darker but more or less the same size. Similarly she didn't believe the child had hit herself with her dummy and had challenged both her mother and the child's mother. "It didn't make sense" she said. She said that the mother had replied, "Well that is what [the father] said." She said she didn't get the chance to take it any further but she might have done something on the following Monday except that by then X was in hospital.

[18] Cross examined by Miss Ramsey for the father, P agreed that her sister took a "hands on" approach to X's care. In relation to the bruising she said that initially she thought that the bruises were an accident but by 6 December she did not see how the child could accidentally get all these marks. She was quite clear that she had pointed out the marks to her mother and when it was put to the witness that her mother said that she hadn't heard her speaking because the extractor fan was on, P denied this and said that she had shown the marks to her mother and had said to the mother "I don't want X going home" after her mother had said about the nipping. When asked by me why she had not taken more decisive action about her concerns she said that she was a bit reticent about saying what she thought as if she had started to express her concerns she didn't think she would have been allowed to see the child. She said that she was planning to phone Social Services but didn't then do so because she knew that X had been taken into hospital. The reason that she had done nothing up until that point was because she was trying to think of the consequences for the relationship between her and her sister if she had. She said that in the period between X's birth and her being taken into hospital neither the mother nor her

mother had ever said anything about things not being good between the mother and the father. She gave her own description of the events at the Odyssey at which she had also been present in which she confirmed the mother's account, saying that the father had grabbed the girl who was 13,14 or maybe 15 years old and thrown her down two flights of seats.

[19] The father's father was called and gave evidence that he and his wife had three children, the eldest an undergraduate and the youngest a grammar school pupil. The father was the middle child and as a result of difficulties at the time of his birth had learning difficulties and had had to go to speech therapy and had trouble with concentration. He had left school at 16 with no qualifications and his interest had always been in farming. He and his wife as prospective grandparents were excited about the coming birth of X and had contributed to the father and mother setting up home together and helped with furnishings. He had found out about the injuries to X in a telephone call from his son, the father, about 7 or 8 pm on the evening of 9 December 2009. The son said that he had been told that there was a broken rib. There was then a second phone call, this time from the maternal grandmother in the course of it he was told by her that there was not one broken rib but four broken ribs on one side and five broken ribs on the other, a broken arm and a broken leg and that the child was "covered in nips". He had asked her who had done this and the grandmother had replied "I don't know, [the father] has a bad temper and [the mother] has a bad temper when she starts." She had also said "[the father] is very rough with her you know." The maternal grandmother had then told him that she was going to tell the police that she had no knowledge of the father being in the house and deny any knowledge of X being in her house to which the witness had advised her to be careful what she said. The witness had then telephoned his son and asked him why he had not told him about the extent of the injuries to which the son replied that he did not know them. The son had said that he had been told by the maternal grandmother to get out of the house. His father told him to remain at his friend's house until he had made some enquiries and he then tried to get in touch with two cousins of his wife who were social workers and left messages for them to contact him. They did contact him the following morning and advised him to tell the parents to "put their hands up right away if they were guilty". He immediately got in touch with the Social Services office by telephone and told them as much as he knew and gave them contact details for his son and invited them to come to see him at the family home.

[20] The paternal grandfather said that he could not understand why he never saw a sign of all this and that he couldn't point the finger at anyone - "I never saw a red light". He said that he hadn't seen much of his son as a father and did not rule out either his son, the father, or the mother as possible perpetrators. It was suggested to him that he would have trouble controlling his son to which he replied that he was verbally bad tempered but that he had never seen him use violence or slamming doors in the family home. He did

agree that he had got into trouble with the police at one stage and he agreed that if he and his wife were looking after X if need be he would have to call the police if the father wouldn't behave. He agreed that he knew that his son had been involved in fighting when at school but he explained that by saying that the headmaster had told him that his son was acting in self defence although it was true that he had been suspended. He had heard about his son kicking P and had said that he shouldn't have done that. The various other incidents at the Odyssey and elsewhere were put to him and the witness' tendency in response was to minimise the responsibility of his son for what had happened. Regarding his ability to influence his son he said "I can only advise him on his conduct but he is twenty years of age and he will make his own decisions. It is fair to say that he doesn't like people dictating to him". He agreed that his son likes to have the last word. He said that he had never seen the part of his son when he "saw red" but that if that happened in his home he would have to ask him to leave and if necessary physically remove him from the house.

Psychological reports

[21] Both parents were interviewed and subjected to psychometric assessment by Mr Michael Barbour, a Forensic and Educational Psychologist whose reports were by agreement admitted in evidence without formal proof. The outcome of the psychometric assessments and his conclusions on both parents are of interest. Firstly, in the case of the mother she had a full scale IQ in the low average range. He identified a number of factors present in her background and presentation during interview which would suggest an increased risk of her engaging in violent behaviour including towards her daughter. In this connection he identified her previous violent behaviour, the fact that it was first committed at the young age of 16, that she had displayed a pattern of difficult and anti social behaviour from her teens in school, at home and in the community, the fact that she had been involved in an unstable or conflictual relationship such as that with the father and a tendency to minimise or deny past violence.

[22] With regard to the father, his verbal IQ was found to be in the low range (75) but his performance IQ was found to be in the average range (100) which meant that it was impossible to calculate a full scale IQ by reason of the large discrepancy between the two scores. At the same time Mr Barbour pointed out that the father was not co-operative with assessment on many of the verbal items administered and was critical and dismissive of the test materials and the process making statements such as "how stupid is this", "what the hell are these about" and "this is to make me look stupid". During the assessment the father displayed a tendency to provide impulsive answers and became noticeably more anxious and agitated when presented with longer series of questions. Mr Barbour therefore concluded that the verbal IQ score obtained was an under estimate of the father's actual verbal abilities and he was of the opinion that he is in fact a reasonably able man whose overall IQ may fall

within the average/low average range. So far as the father's overall approach to the testing and interview was concerned, Mr Barbour said that he did not feel that the father had been completely open and/or honest during his interview with him and he did not feel that he was fully engaged in the assessment process. Mr Barbour identified a number of characteristics which would suggest an increased risk of the father engaging in violent behaviour towards X. These were the presence of impulsivity and agitation during assessment together with quite marked swings in mood in response to questions asked of him, i.e. from being pleasant and mannerly to be hostile and unco-operative. He also referred to the father being in a conflictual or unstable relationship with the mother which was strongly indicated and also observed that there is evidence from both individual's accounts of their relationship that the father displayed significant jealousy towards the mother and that he sought to exert a degree of control in the relationship. Finally, Mr Barbour found that there was evidence from his interview that the father held quite negative views about the mother which were present prior to their separation. He had also expressed negative views towards Mr Barbour and his assessment during interview as well as attitudes supportive of violence towards people who made him angry. In his opinion the presence of negative attitudes towards certain individuals or groups can increase the risk of violence.

Consideration

[23] In this case there is no question but that X sustained injuries over a period of time, some in the form of bruising and others in the form of multiple and significant fractures. The child was in the care of both parents during the relevant period yet neither saw any marks other than the two bruises or was aware of any pain or discomfort or really can say anything as to how the serious injuries were sustained beyond each denying that he or she was responsible. I watched and listened very carefully to both of them while they gave their evidence and I consider that neither was truthful and that both were preoccupied with exculpating themselves at any cost. I am unable to conclude which of the parents caused the injuries or whether both caused some of the injuries but I am quite certain that both were well aware that the child had suffered some injuries before their full extent was established after the child was ultimately brought to hospital on the direction of the general practitioner. I am satisfied that they are both bad tempered and at times angry people and that X with her well-established feeding and diarrhoea problems would have been capable of readily provoking either of them to a violent and uncontrolled reaction. I am also satisfied that both failed to protect X from harm that each knew she was suffering at their own or the other's hands.

[24] I am satisfied that the evidence of P, the mother's sister, was altogether truthful and that she was genuinely concerned about the welfare of the child for quite some time before the injuries were ultimately discovered and had pointed out marks to the maternal grandmother. What if anything the latter

thought or did about those marks is unknown as she, somewhat surprisingly, was not called to give evidence despite plainly knowing a good deal about the events that occurred around the time that X was admitted to hospital and when the fractures were discovered. It certainly appears from the evidence of the paternal grandfather, which I accept, that the maternal grandmother wished to continue to conceal the existence and identity of the father from the authorities even after the extensive and serious nature of the injuries had been discovered. Why this should have been has not been explained. Mrs Keegan submitted that I should draw an adverse inference against the maternal grandmother by reason of her failure to give evidence when she plainly had material evidence to give but I am not prepared to do so. There are various possible explanations for her failure to give evidence, some of them innocent, and it would not be safe to include her in the pool of possible perpetrators. I am however satisfied on the evidence of P that her mother had knowledge of injuries to X for some time before the admission to hospital but failed to do anything, or anything effective, to protect the child. Unfortunately I must reach a similar conclusion in respect of P who was frightened to say anything in case she was denied access to her niece. Had she or her mother acted swiftly and decisively the more serious injuries might have been prevented or minimised. I am sure that P now greatly regrets her inaction. What the grandmother thinks on that score I have been denied the means of assessing. I have no evidence that would include anyone else in the pool of perpetrators or among those who knowingly failed to protect X.

Care Planning Postscript

[25] This hearing was not concerned with care planning but rather was intended to result in findings that would inform care planning in due course. However some of the evidence was in fact directed to that subject and each Counsel in closing made passing reference to it so that I think it appropriate to say a little concerning it. I am aware that the Trust is contemplating the possibility of placing X with the paternal grandparents and they may be excellent people. Certainly no-one has sought to suggest that they were in any way concerned in the injuries to the child or in failing to protect it. However the evidence concerning the relationship between the paternal grandfather and the father from a number of witnesses including the father and grandfather themselves causes me to be apprehensive that the father would not find it easy to safely control his son's access to X which in the light of my findings I consider would be absolutely essential to keeping X safe. I accept P's assessment that the son tends to "boss" his father and this was confirmed by the son's own remark that he would "have to get used to his father telling him what to do". The evidence establishes that the son is a bad-tempered, violent thug who does not hesitate to strike out at others, including women, with little or no provocation or warning. However in the face of all that his father knows about his previous discreditable activities the latter tends to make unconvincing excuses for him and to minimise the son's responsibility for his

bad behaviour. I was also unimpressed by the grandfather's telling his son on the telephone not to come home on the night that he heard of the injuries to the child so that he could first consult relatives who are social workers as to what was best to be done and one is left to wonder what action he might have taken had he not had them to call upon and had they not given him the very proper advice that they did. It therefore seems to me that Mr Long Q.C. correctly summarised in his closing submissions the real concerns about the ability of the paternal grandparents to keep X safe. These will need to receive very careful consideration following this judgment and perhaps necessitate the involvement of an expert in the "Resolutions" model before any final decision about placement can properly be reached.